JULIA A. OLSON (OR Bar 062230)
juliaaolson@gmail.com
WILD EARTH ADVOCATES
1216 Lincoln Street
Eugene, OR 97401
Tel: (415) 786-4825

DANIEL M. GALPERN (OR Bar 061950)
dan.galpern@gmail.com
LAW OFFICES OF DANIEL M. GALPERN
2495 Hilyard Street, Suite A
Eugene, OR 97405
Tel: (541) 968-7164

JOSEPH W. COTCHETT
jcotchett@cpmlegal.com
PHILIP L. GREGORY (*pro hac vice*)
pgregory@cpmlegal.com
PAUL N. MCCLOSKEY
pmccloskey@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000
Fax: (650) 697-0577

Attorneys for Plaintiffs

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

LISA LYNNE RUSSELL, Chief
GUILLERMO A. MONTERO, Assistant Chief
SEAN C. DUFFY (NY Bar No. 4103131)
MARISSA PIROPATO (MA Bar No. 651630)
Trial Attorneys
Natural Resources Section
601 D Street NW
Washington, DC 20004
(202) 305-0445 (Duffy)
(202) 305-0470 (Piropato)
sean.c.duffy@usdoj.gov
marissa.piropato@usdoj.gov
Attorneys for Federal Defendants

C. MARIE ECKERT (OR Bar 883490)
marie.eckert@millernash.com
SUZANNE C. LACAMPAGNE (OR Bar 951705)
suzanne.lacampagne@millernash.com
MILLER NASH GRAHAM & DUNN LLP
3400 U.S. Bancorp Tower 111 S.W. Fifth Avenue Tel: (503) 224-5858
Fax: (503) 224-0155

Attorneys for Intervenor-Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; *et al.*,
Plaintiffs,
v.
The UNITED STATES OF AMERICA; **DONALD TRUMP**, in his official capacity as President of the United States; *et al.*,
Federal Defendants.

Case No.: 6:15-cv-01517-TC

JOINT STATUS REPORT AS OF MAY 12, 2017

On May 4, 2017, counsel for the parties met and conferred for a full day in person in Portland, Oregon. The parties conferred on the following topics and hereby respectfully provide this joint status report to inform the court of the status of discovery and other pending or upcoming motions.

Defendants' Motions for Interlocutory Appeal and Stay

On May 5, 2017, Federal Defendants filed objections to Magistrate Judge Coffin's May 1, 2017 Findings and Recommendations ("F&Rs"). On May 9, 2017, Intervenor Defendants filed objections to the F&Rs. Plaintiffs will file their response to Federal Defendants' Objections by May 19, 2017 and to Intervenor Defendants' Objections by May 23, 2017, pursuant to Fed. R. Civ. P. 72 and Magistrate Judge Coffin's Findings and Recommendations. Federal Defendants have asked the Court to expedite consideration of the objections and issue a decision by May 19, 2017. Plaintiffs oppose expedited review and Intervenor Defendants do not oppose.

On May 9, 2017, Federal Defendants filed objections to Magistrate Judge Coffin's denial of their motion to stay and have asked the Court to expedite consideration of that motion. Plaintiffs oppose expedited review and Intervenor Defendants do not oppose. Plaintiffs will file their response to these objections on May 23, 2017.

Plaintiffs' Requests for Production of Documents

Intervenor Defendants objected to Plaintiffs' requests for production of documents and the parties have conferred on those requests. Plaintiffs agreed to narrow the requests to address Intervenor Defendants' concerns of overbreadth. However, the parties disagree as to whether the requests, even when narrowed, are relevant to the claims in the case and will need to brief the issue for the Court's resolution.

Federal Defendants have not formally served objections to Plaintiffs' requests for production of documents. Federal Defendants and Plaintiffs have conferred regarding Federal Defendants' concerns with regard to the scope of the requests for production of documents and possible claims of deliberative process and/or executive privilege. Federal Defendants agreed to produce documents related to the organizational structure of the State Department. Plaintiffs agreed to narrow their other requests temporally, to certain agency personnel, and as to types of documents.

Federal Defendants' position is that Plaintiffs have stated an intent to propound new RFPs on the Executive Office of the President, the Department of State, the Department of Defense, and the United States Department of Agriculture on May 15. Those new RFPs would supplant Plaintiffs' previous RFPs on those Federal Defendants. The parties will then meet and confer. Defendants reserve their right to assert all privileges, including deliberative process and executive privilege as appropriate. During a call with counsel on May 11, Plaintiffs stated that they needed to review Federal Defendants' objections to the initial RFPs before they could file narrowed requests. Federal Defendants offered to provide objections by June 1, after which Plaintiffs would provide narrowed requests. Following the call, Plaintiffs counter-offered to provide narrowed RFPs on May 15 if Federal Defendants would respond by June 5. Narrowed RFPs that supplant the original RFPs would render objections to the former futile. Because Federal Defendants have not yet seen the narrowed RFPs, they are unable to commit to a shortened timeline (*i.e.* June 5) for their response to such narrowed RFPs.

Plaintiffs, however, disagree with Defendants on this point and their position is that, during a call with counsel on May 11, Federal Defendants offered to provide written responses to the requests Plaintiffs have already served by June 1. Plaintiffs then offered by May 15 to narrow the requests to which Federal Defendants need respond and offered to give Federal Defendants until June 5 to provide their written responses. After counsel initially agreed to this, Federal Defendants ultimately would not agree to this. Plaintiffs request that either: 1) Federal Defendants provide written objections to the RFPs already served by June 1; or 2) Plaintiffs send a narrowed list of those requests by May 15, to which Federal Defendants would have until June 5 to respond.

Plaintiffs have offered to go to NARA libraries to review 388 boxes of records from the Environmental Protection Agency ("EPA") that are located in College Park, Maryland, and other boxes of documents that Federal Defendants make available at NARA facilities. Federal Defendants continue to work with NARA and will update Plaintiffs on a rolling basis as to the status of the documents and whether they can be produced even where protected and/or classified. Federal Defendants will provide Plaintiffs with an update on the timeline regarding any assertions of presidential privilege.

Depositions

Plaintiffs seek to depose cabinet level officials as well as the heads of Intervenor Defendants. All Defendants object to these depositions and will seek a protective order. The parties will need this issue resolved by the Court. Intervenor Defendants indicated that they would likely allow the individuals that filed declarations with their motion to intervene or 30(b)(6) witnesses on the topics contained therein to be deposed. Plaintiffs and Intervenor Defendants will discuss this further.

After meeting and conferring, on May 11, 2017, Plaintiffs noticed the depositions of two federal government employees: C. Mark Eakin, Coordinator of National Ocean and

Atmospheric Administration's Coral Reef Watch program, Satellite Oceanography & Climatology Division; and Michael Kuperberg, Executive Director, United States Global Change Research Program. Federal Defendants stated they would not raise the same objections to these depositions as to the cabinet level defendants but reserve the right to object on other grounds. Federal Defendants explained that these two witnesses may not be 30(b)(6) designees of the Federal Defendants, which Plaintiffs acknowledged.

Plaintiffs have provided a list of preliminary proposed topics for Rule 30(b)(6) depositions and have conferred with Defendants, who requested that the topic areas be limited. Plaintiffs will formally notice the depositions before the end of May. All Defendants reserve all objections until they are able to review the formal 30(b)(6) notices of deposition.

The Federal Defendants intend to depose each of the named Plaintiffs for purposes, among others, of exploring each named Plaintiff's standing.

Plaintiffs' Request for Admissions

Federal Defendants and Plaintiffs have previously conferred on the Requests for Admission to the EOP and EPA. Responses to the Requests for Admission are due by May 31, 2017. Federal Defendants have not yet determined whether they will provide substantive responses, objections, or a combination thereof in response to the RFAs.

Intervenor Defendants are working toward providing responses to Plaintiffs' Requests for Admission on Federal Defendants' answer, which are currently due by May 18, 2017. Intervenor Defendants have moved for an extension of time until June 7, 2017, to provide those responses. Plaintiffs oppose the motion for an extension of time.

Federal Defendants have reserved the right to move to amend yet have nothing further to report on the issue.

Experts

Plaintiffs have disclosed the names of their experts and the subject matter of their testimony. Federal Defendants have spoken to potential experts who have not had an opportunity to review Plaintiffs' experts' opinions. Thus, Federal Defendants request that Plaintiffs' experts prepare their reports before Federal Defendants are required to disclose their experts. Plaintiffs do not agree to this sequencing. Intervenor Defendants intend to defer to Federal Defendants' experts on many issues, except perhaps regarding the feasibility of the remedy, and agree that having Plaintiffs' expert reports in advance of disclosing experts and having more clarity on what topics the Federal Defendants will offer expert testimony would be beneficial. The scope of admissions by Intervenor Defendants will help determine the scope of Plaintiffs' expert reports. Plaintiffs are working expeditiously with their experts to prepare expert reports.

The parties agree that they need a schedule for Plaintiffs' expert reports, Defendants' expert reports, and expert depositions, but have not yet agreed to a schedule.

Informal Methods of Obtaining Information

Plaintiffs assert that information, documents, and data related to climate change continue to be removed from websites maintained by Federal Defendants. Federal Defendants have agreed to provide to Plaintiffs documents that Plaintiffs can no longer locate on the internet, if Plaintiffs provide a list of such documents. The parties have not agreed to a timeframe for producing such documents.

Trial Schedule

Given Plaintiffs' concerns about the urgency of climate change, Plaintiffs continue to prepare for a late 2017 trial date, and believe that if a discovery schedule is set and adhered to by the parties, the parties will be ready for trial this year. As previously briefed, Defendants believe that this matter should be stayed and, if no stay is granted, that a trial schedule should not be set until this Court resolves some of the present discovery disputes and the scope of the issues to be decided at trial. Defendants also believe that a late 2017 trial date is wholly unrealistic given the extraordinary scope of this matter.

Protective Order

Defendants' Position:

Plaintiffs assert that a protective order is necessary to protect named Plaintiffs. Federal Defendants and Intervenor Defendants are willing to negotiate a protective order that is tailored to meet Plaintiffs' concerns. Those negotiations have not occurred nor have the parties drafted a proposed protective order to aid their discussions. Federal Defendants reiterated their willingness to confer as to the appropriate scope of any protective order during the May 4 meet and confer.

Plaintiffs' Position:

It is Plaintiffs' position that all counsel had previously agreed to protect information obtained about all the plaintiffs in discovery, such as their deposition testimony, via a protective order. During the February 7 case management conference, Defendants explicitly agreed to a protective order (ECF 115, at 43-44). During the May 4 meet and confer, the parties agreed to confer as needed to determine whether certain portions of deposition testimony Defendants wish to use in briefing, can be exempted from the protective order to avoid having entire briefs filed under seal. Defendants now appear to be walking back from what they agreed to at the February 7 case management conference and May 4 meet and confer. Plaintiffs find this very troubling, especially in light of the threats the Plaintiffs unjustly receive as a result of being plaintiffs in this case.

Status of Discovery Propounded to Date

Plaintiffs have propounded the following discovery:

DATE PROPOUNDED	DATE RESPONSES DUE	PARTY OR PARTIES	TITLE	STATUS
12/28/2017		API	Plaintiffs' Notice of Deposition of Rex Tillerson	To be re-noticed
1/20/2017	5/31/2017	EOP, EPA	First Set of Requests for Admission to Defendants Executive Office of the President and the Environmental Protection Agency	On March 7, 2017, Plaintiffs sent additional definitions for these Requests for Admission.
2/17/2017	3/23/2017	API	Request for Production of Documents to American Petroleum Institute	On March 20, 2017, Intervenor Defendants responded without producing any documents, only serving objections. Plaintiffs will narrow. Intervenor Defendants refuse to produce even when narrowed.
2/21/2017	5/6/2017	All Federal Defendants	Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	No production yet.
3/7/2017	4/6/2017	All Intervenor Defendants	Request for Production of Documents	Plaintiffs will narrow
3/7/2017	5/6/2017	All Federal Defendants	Second Set of Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	No production yet.
3/7/2017	Originally 5/6/2017 Court extended to after meet and confer process	EOP, DT	Request for Production of Documents to Defendants Executive Office of the President and President Donald Trump	See RFP section above
3/17/2017	4/16/2017	API	Third Set of Requests for Production of Documents to American Petroleum Institute (re: "Wayne Tracker" emails)	
3/17/2017	Originally 5/16/2017 Court extended to after meet and confer process	All Federal Defendants	Third Set of Requests for Production of Documents to Federal Defendants (re: "Wayne Tracker" emails)	
3/24/2017	5/18/17	All Intervenor Defendants	Request for Admission to Intervenor Defendants	

3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	USDA	Request for Production of Documents to Defendant United States Department of Agriculture	See RFP section above
3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	USDOD	Request for Production of Documents to Defendant United States Department of Defense	See RFP section above
3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	State	Request for Production of Documents to Defendant United States Department of State	See RFP section above

Dated: May 12, 2017

By: /s/*Julia A. Olson*

JULIA A. OLSON

JULIA A. OLSON (OR Bar 062230)
1216 Lincoln Street
Eugene, OR 97401
Tel: (415) 786-4825

DANIEL M. GALPERN (OR Bar 061950)
2495 Hilyard Street,
Suite A Eugene,
OR 97405
Tel: (541) 968-7164

PHILIP L. GREGORY (*pro hac vice*) 840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000
Fax: (650) 697-0577

Dated: May 12, 2017

By: */s/ Sean C. Duffy*

SEAN C. DUFFY (NY Bar 4103131)
MARISSA A. PIROPATO
601 D Street
NW
Washington,
DC 20004
Tel: (202) 305-0445
Fax: (202) 305-0506

Dated: May 12, 2017

By: */s/ C. Marie Eckert*
C. MARIE ECKERT

C. MARIE ECKERT (OR Bar 883490)
SUZANNE C. LACAMPAGNE (OR Bar 951705)
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Tel: (503) 224-5858
Fax: (503) 224-0155

MARK D. HOPSON *(pro hac vice)*
FRANK R. VOLPE (*pro hac vice*)
BENJAMIN E. TANNEN (*pro hac vice*)
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
Fax: (202) 736-8711

Attorneys for Intervenor-Defendants

Certificate of Service

I hereby certify that on May 12, 2017, I filed the foregoing with the Clerk of Court via the CM/ECF system, which will provide service to all attorneys of record.

/s/ Sean C. Duffy
Sean C. Duffy

Attorney for Federal Defendants